Filed 6/6/17 J.D. v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

J.D., Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B280991 (Los Angeles County Super. Ct. No. DK03057)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Nichelle L. Blackwell, Judge. Petition denied.

Law Offices of Vincent W. Davis & Associates, and Stephanie M. Davis for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah J. Vesecky, Senior Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Petitioner is the mother of one-year-old J.D., a dependent of the juvenile court. She has filed a petition for extraordinary writ pursuant to rule 8.452 of the California Rules of Court challenging the juvenile court's February 15, 2017 order terminating her reunification services and setting a hearing under Welfare and Institutions Code section 366.26.[1] We conclude there is substantial evidence supporting the juvenile court's decision that the Los Angeles County Department of Children and Family Services (DCFS) provided reasonable services. We therefore deny the petition.

PROCEDURAL BACKGROUND AND FACTS

Mother and DCFS set out in their papers the complete history of the lengthy juvenile court proceedings in this case. Repetition is not required except when necessary to address the specific claims for extraordinary relief.

J.D. was born in February 2016. The next day, an emergency referral was made to DCFS alleging mother tested positive for marijuana on the day of J.D.'s birth. During a

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[1] Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

subsequent interview with a DCFS social worker, mother admitted frequently using marijuana to control pain and emotional problems. Mother stated she had been diagnosed with Bipolar Disorder and Attention Deficit Hyperactivity Disorder (ADHD), but had not taken any medication for the conditions within the last year.

On February 29, 2016, a DCFS social worker visited mother in her home. Mother stated she was depressed, possibly because of her Bipolar Disorder. Mother indicated she wanted to go to therapy, and the social worker provided mother referrals for therapy agencies. Mother agreed to a drug test.

On February 29, 2016, DCFS received drug test results for J.D., showing he tested positive for cannabinoids and carboxy tetrahydrocannabinol. On March 8, 2016, DCFS received drug test results for mother, showing she tested positive for cannabinoids.

On March 11, 2016, DCFS filed a petition pursuant to section 300 alleging J.D. needed the protection of the juvenile court. DCFS alleged J.D. was born suffering from the detrimental condition of a positive toxicology screen for marijuana caused by mother's drug use. DCFS further alleged mother's illicit drug use and failure to take medication for her Bipolar Disorder and ADHD render her incapable of providing regular care and supervision of J.D. Additionally, the petition alleged J.D.'s sibling was a current dependent of the court based on mother's substance abuse.

On March 11, 2016, the court found DCFS had established a prima facie case for detaining J.D. and showing J.D. is a person described by section 300. The court ordered J.D. released to mother with the conditions that she keep DCFS advised of her

whereabouts, make J.D. available for unannounced home visits, comply with a psychiatric evaluation, take all prescribed medication, and provide clean drug tests. The court further ordered DCFS to provide mother with referrals for substance abuse counseling, a psychiatric evaluation, and counseling to address case issues.

On March 12, 2016, mother received a psychiatric evaluation by Dr. Brian McPhee at Exodus Recovery, Inc., Mental Health Urgent Care Center (Exodus Recovery). Dr. McPhee noted on a prescription pad that mother "does not presently exhibit any evidence of a mental illness. Medications are not indicated at this time."

On March 16, 2016, mother enrolled in mental health individual therapy at Asian Pacific Counseling and Treatment Centers. As of April 25, 2016, mother had attended all five scheduled sessions.

On March 22, 2016, mother enrolled in a parenting class at the Community Alcohol and Drug Treatment Foundation. As of April 25, 2016, mother had attended all scheduled individual and group sessions. She maintained consistent progress and actively participated in discussions.

On April 6, 2016, mother was referred to a substance abuse counselor with the Asian Pacific Counseling and Treatment Centers. As of April 25, 2016, mother had attended two of three scheduled substance abuse counseling sessions.

On April 7, 2016, mother reported to a social worker that she was raped by M.L., a man alleged to be J.D.'s father. The social worker advised mother to file a restraining order to protect herself and J.D. On April 12, 2016, another incident of domestic violence occurred between mother and M.L. M.L. was intoxicated

and repeatedly attempted to get inside mother's home to see J.D. Mother eventually called the police, but only as a last resort. She told the police she wanted M.L. off her property, but did not want him arrested. On April 15, 2016, mother obtained a temporary restraining order against M.L. from the North Valley District Superior Court.

On April 21, 2016, the court signed a warrant for J.D.'s removal from mother's home. The warrant was based on concerns that mother missed a drug test and continued to have contact with M.L., who had a history of domestic violence.

On April 26, 2016, the court ordered J.D. removed from mother's custody and placed in foster care. The court was concerned that mother missed a drug test and had not been forthcoming about M.L.'s history of domestic violence. The court ordered DCFS to provide family reunification services to mother. The court further ordered mother to continue participating in a drug and alcohol treatment program and parenting class, and ordered DCFS to provide a referral for a domestic violence for victims program.

At the April 26, 2016 hearing, mother's counsel represented she had undergone a psychiatric evaluation from Exodus Recovery. The court found the report, which consisted of Dr. McPhee's handwritten notes on a prescription pad, insufficient. The court ordered mother to either undergo a new evaluation with Exodus Recovery, or for Exodus Recovery to provide a full report from a prior evaluation. Alternatively, DCFS was to refer mother for a complete psychological evaluation.

On April 29, 2016, DCFS filed a first amended petition alleging new allegations relating to the history of domestic violence between J.D. and M.L.

On May 11, 2016, a DCFS dependency investigator spoke to mother over the phone regarding her progress with the court ordered programs. Mother represented she was attending parenting classes as well as a domestic violence for survivors' program at the Community Alcohol and Drug Treatment Center. She further represented she attended weekly individual therapy sessions and a drug diversion program at Asian Pacific Counseling Centers.

On May 31, 2016, mother pleaded no contest to the amended allegations in the first amended petition, and the court sustained the allegations. The court removed J.D. from mother's custody and ordered him suitably placed. The court ordered DCFS to provide mother reunification services. Mother's case plan required her participation in a full drug and alcohol program with aftercare, biweekly random or on demand drug and alcohol testing, attendance in a domestic violence support group for victims, a developmentally appropriate parenting class, and individual counseling to address case issues, including childhood abuse, with a licensed therapist or someone supervised by a licensed therapist. Mother was also required to receive a psychiatric assessment and take all prescribed medication, if any. The court also issued a three-year permanent restraining order against M.L.

On June 17, 2016, a DCFS social worker met with mother in her home. The social worker attempted to discuss with mother the necessity of following the court's orders. The social worker noted that mother had angry outbursts and displayed hostility throughout the discussion.

Mother represented she had attended six of seven scheduled substance abuse counseling sessions at the Asian

Pacific Counseling and Treatment Centers. The social worker informed mother she was required to have a sponsor and court card, which would likely require enrollment in a program like Alcoholics Anonymous or Narcotics Anonymous. The social worker found mother reacted with "a very explosive demeanor and argue[d] that her attorney said she did not have to do that." It appears the social worker was mistaken in this advice, as the case plan did not require a program with a court card and sponsor.

Mother represented she enrolled in mental health individual therapy at Asian Pacific Counseling and Treatment Centers on March 16, 2016. As of May 17, 2016, mother had attended all seven scheduled sessions.

Mother represented she had completed all but one domestic violence class. Mother stated the agency providing the classes shut down. She was attempting to get in touch with a staff member in order to attend her last course and receive a certificate of completion.

Mother represented she completed twelve hours of parenting training from the Community Alcohol and Drug Treatment Foundation.

Mother did not provide any information regarding a psychiatric evaluation.

During the home visit, the social worker reviewed a handwritten prescription from a doctor at the Asian Pacific Counseling and Treatment Centers.[2] The front of the prescription stated mother did not need medication. The back of the prescription, however, listed three medications mother should

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[2] It is not clear whether this was written by Dr. McPhee.

be taking: Abilify, Seriquil, and lithium. Mother stated she was not taking the medications because she believed she no longer needed medication.

On July 8 and 11, 2016, a DCFS social worker attempted to call mother's substance abuse counselor for an update on her counseling sessions and a synopsis of the services offered, and to request the counselor's credentials. As of August 2, 2016, the counselor had not returned the social worker's calls.

On July 12, 2016, the social worker spoke with Boryea Chea from the Asian Pacific Counseling and Treatment Centers. Ms. Chea confirmed that mother had enrolled in individual therapy on March 16, 2016, and was present until June 28, 2016. Mother had attended nine of the fifteen scheduled sessions. Ms. Chea stated she had not heard from mother since June 28, 2016, and mother's phone number was no longer in service.

The court held a progress hearing on August 2, 2016. At the hearing, mother's counsel indicated she completed her domestic violence counseling and was participating in a drug treatment program at Tarzana Treatment Centers. Mother's counsel agreed mother would participate in an Evidence Code section 730 evaluation to assess her psychiatric condition and need for psychotropic medication.[3] On September 6, 2016,

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[3] Section 730 of the Evidence Code provides, in relevant part, as follows: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action

Dr. Alfredo E. Crespo, a licensed clinical psychologist, conducted a psychological evaluation.

On October 18, 2016, a DCFS social worker sent mother a letter requesting a summary of her progress in the drug treatment program, domestic violence program, and individual counseling. The social worker stated she would forward any letters or certificates of completion to the court.

In December 2016, a DCFS social worker made several attempts to contact the business director of the Community Alcohol and Drug Treatment Foundation. The phone number, however, was disconnected, and the business director did not respond to the social worker's email.

On November 28, 2016, mother tested positive for codeine and morphine. On December 15, 2016, mother failed to appear for a drug test. On December 29, 2016, mother tested positive for cannabinoids.

On January 3, 2017, mother called a DCFS social worker and informed her she was being harassed and stalked by M.L. Mother indicated she had not called the police because she did not have the paperwork for her restraining order. The social worker noted mother was slurring her words and was incoherent. Mother missed a scheduled drug test the next day.

A contested six-month review hearing was held on February 15, 2017. Mother presented the court with a letter verifying her admission into the Tarzana Treatment Centers' Outpatient Program on July 27, 2016. Mother completed the 6-month program on January 27, 2017. While in treatment,

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relative to the fact or matter as to which the expert evidence is or may be required."

mother participated in and completed courses in relapse prevention, substance abuse, 12-step education, jump start, healthy relationships, and other specific groups related to her treatment plan.

Mother testified she completed a parent education program as ordered by the court.

Mother testified she completed a domestic violence program in July 2016. She attended two classes per week for "quite a while," and then attended classes once a week. On cross-examination, mother was asked how she completed the program in July 2016 when the program shut down in May 2016. Mother responded that she completed the program before it shut down, but received the letter evidencing the completion in July 2016.

Mother testified she attended individual counseling sessions once a week for about six months. Mother admitted she had not attended an individual counseling session for several months. She did not explain why she stopped attending individual counseling. Mother stated she was aware individual counseling was part of her case plan.

Mother testified she saw a psychiatrist on two occasions in 2016. Mother testified the psychiatrist did not prescribe her any medication, but suggested she take Seriquil, lithium, and Abilify.

After hearing argument from all counsel, the court terminated reunification services and set the matter for a hearing pursuant to section 366.26. The court found there was clear and convincing evidence to demonstrate reasonable services were provided to mother.

The court found that, although mother participated in the court-ordered programs, she did so in an "unmeaningful or superficial level." For example, the court found mother failed to

gain insight from her domestic violence for victims program, evidenced by the fact mother failed to call the police when harassed by M.L. in January 2017. The court found it "odd" that mother did not keep a copy of the restraining order, given this is something she would have learned to do in a domestic violence program. The court was also suspicious of mother's claim to have completed the domestic violence program.

The court found mother failed to gain insight from her drug treatment program, evidenced by the fact mother missed drug testing in December 2016 and January 2017, and tested positive for cannabinoids, codeine, and morphine during the same time period.

The court found mother failed to complete the required individual counseling. The court noted individual counseling was a very important component of the case plan because mother was diagnosed with a mood disorder. Moreover, the Evidence Code section 730 evaluation indicated mother needed to gain insight into her mental health issues, which is something individual counseling would address.

On February 21, 2017, mother timely filed a notice of intent to file a writ petition and request for record. The present petition for extraordinary relief followed.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services because there is no substantial evidence supporting the court's finding that DCFS provided reasonable services. Specifically, mother argues DCFS (1) failed to make any efforts to refer her to the court ordered case plan programs, including the psychiatric assessment; (2) failed to maintain reasonable contact with mother during the case plan; and

(3) failed to follow up with mother's service providers to ensure she received appropriate services.

Typically, when a child under the age of three is removed from a parent, the parent is entitled to six months of child welfare services to facilitate family reunification. (§ 361.5, subd. (a)(1)(B).) If, at the six-month hearing, the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing to terminate parental rights pursuant to section 366.26. (§ 366.21, subd. (e)(3).) However, in no case shall the court set a section 366.26 hearing if reasonable services have not been provided to the parent. (*Ibid.*; *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164 ["[c]ourts may not initiate proceedings to terminate parental rights unless they find adequate reunification services were provided to the parents"].)

"The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547; see also *Robin V. v. Superior Court, supra*, 33 Cal.App.4th at p. 1164 [the reasonableness of DCFS's efforts are judged according to the circumstances of each case].) DCFS must make a good faith effort to develop and implement a family reunification plan. (*Robin V. v. Superior Court,* at p. 1164; see *In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist

the parents in areas where compliance proved difficult . . . ." (*In re Riva M.,* at p. 414, italics omitted.)

We review the juvenile court's reasonable services finding for substantial evidence (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971), bearing in mind that in "almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.) " 'If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.' " (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472, quoting *In re Misako R.,* at p. 545.)

The case plan ordered by the juvenile court was for mother to participate in a full drug and alcohol program with aftercare, biweekly random or on demand drug and alcohol testing, attendance in a domestic violence support group for victims, a developmentally appropriate parenting class, and individual counseling to address case issues including childhood abuse, with a licensed therapist or someone supervised by a licensed therapist. The court also ordered a psychiatric evaluation.

This is the first time mother has raised the issue of DCFS failing to provide reasonable services. Not once did mother alert the juvenile court that she was having difficulty with compliance, DCFS was not providing adequate support, or DCFS failed to provide referrals. Nor did she assert the programs or services were in any way insufficient. To the contrary, mother frequently represented to the juvenile court that she was attending the required programs and complying with the case plan. At the February 15, 2017 hearing, for example, mother's counsel argued she was in "more than substantial compliance" with the case plan. We conclude that if mother believed DCFS was not

providing sufficient support to enable her to comply with the case plan, she was required to raise such concerns so the juvenile court could address the situation and consider another plan. Mother's objection for the first time in this petition comes too late. (See *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110 [a parent waived her right to challenge the inadequacies of reunification services by failing to object at the time services were terminated]; *Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093 [a parent may not "wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing"]; *In re Christina L.* (1992) 3 Cal.App.4th 404, 415-416 ["[t]he law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them"]; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1182 [it is unfair to the trial court and the adverse party to give appellate consideration to an alleged procedural defect which could have been presented to, and may well have been cured by, the trial court].)

Regardless, the record shows DCFS made substantial efforts to assist mother and monitor her progress with respect to the case plan. The social workers assigned to mother's case contacted her both in person and by mail to inquire about and discuss mother's compliance with the case plan. DCFS records also indicate DCFS provided mother services on 19 occasions between August 1, 2016, and January 26, 2017.[4] Moreover,

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[4] The records do not indicate the nature of the services provided. These ambiguities could have been addressed had

contrary to mother's assertions, on multiple occasions social workers contacted or attempted to contact program personnel to gauge mother's progress and evaluate the appropriateness of the programs.

To the extent DCFS did not take a more active role in arranging and monitoring mother's services, this can be attributed in large part to mother's actions and representations. Indeed, mother repeatedly informed social workers and the court that she was enrolled in or had successfully completed the required programs. However, on multiple occasions, mother refused to disclose to DCFS the names of her treatment providers. Moreover, when a social worker attempted to discuss with mother the case plan and required services, mother reacted with hostility.

Mother's failure to complete her individual counseling is not attributable to DCFS. By her own account, mother attended individual counseling sessions consistently for several months. For an unknown reason, mother stopped attending the sessions. " 'Reunification services are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]' " (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365, quoting *In re Mario C.* (1990) 226 Cal.App.3d 599, 602.) Conversely, reunification services are not inadequate simply because the parent is unwilling or indifferent. (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220; see also *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5 [a social worker is not

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mother raised with the juvenile court the issue of inadequate services.

required to "take the parent by the hand and escort him or her to and through classes or counseling sessions"].)

Mother asserts DCFS failed to provide referrals for services. This is inaccurate. On February 29, 2016, DCFS provided mother referrals for therapy services. We are aware there is no direct evidence in the record that DCFS provided mother any additional referrals for services. However, mother never raised this as an issue with the juvenile court. Nor is there any indication mother had difficulty locating acceptable services, with the possible exception of the psychiatric examination.

Although mother asserts DCFS never referred her for the court ordered psychiatric assessment, she admits to receiving multiple evaluations. On September 6, 2016, for example, mother received a psychological evaluation by Dr. Crespo. Moreover, at an April 26, 2016 hearing, mother's counsel represented she had undergone a psychiatric evaluation by Exodus Recovery, of which DCFS was aware. Counsel indicated mother would either provide a full report of the evaluation, or undergo a new one. It is not clear whether she did so, and, if not, why she failed to do so. Additionally, after mother told a social worker a doctor from the Asian Pacific Counseling and Treatment Centers stated she did not need a psychiatric evaluation and would not provide one, the social worker counseled mother that a doctor should follow a court order for such an evaluation. Mother never raised this as an issue again. If mother believed DCFS was not taking sufficient strides toward arranging a psychiatric evaluation, she was required to raise such concerns so the juvenile court could address the situation.

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

SORTINO, J. *

We concur:

FLIER, Acting P. J.

GRIMES, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.